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DEPARTMENT OF COMMERCE

International Trade Administration

Legal Services Trade Mission to China, September 16 – 18, 2013

AGENCY: International Trade Administration, Department of Commerce

ACTION: Notice

MISSION DESCRIPTION

The General Counsel of the United States Department of Commerce will lead a Legal Services Trade Mission to China, September 16-18, 2013. The purpose of the mission is to introduce U.S. law firms¹ without a presence in China to the Chinese market, to market U.S. legal services to Chinese companies and individuals, to raise awareness about the U.S. legal and business climate to Chinese companies interested in doing business in the U.S. market, and to further an ongoing dialogue with Chinese authorities on opening the Chinese legal services market to expanded practice by U.S. firms.

The trade mission will include stops in Beijing and Shanghai. In both cities, participants will receive market briefings to obtain key information from U.S. officials on the legal services environment in China. They will then participate in specially-tailored forums on U.S. legal services for audiences of Chinese persons seeking to do business in the United States and others seeking legal services in China and the United States. In addition, the trade mission will include opportunities for participants to have policy discussions with Chinese government officials in

¹ For purposes of this trade mission, a “U.S. law firm” is defined as a law firm that is formed under the laws of a U.S. state or the District of Columbia and with its principal place of business in the United States.

order to learn more about the regulatory landscape and present the benefits that U.S. law firms can provide to Chinese and U.S. companies. Joining the official U.S. Department of Commerce Trade Mission will enhance the participants' ability to engage in such meetings, which can be difficult to obtain when not accompanied by government officials. In addition to U.S. law firms, bar associations and other organizations that represent U.S. legal service providers are encouraged to apply.

COMMERCIAL SETTING

As China seeks to transition from a manufacturing, export-based economy to a center of international business and finance, its need for sophisticated multinational legal and financial services is growing. Illustrating this trend, more than 200 foreign law firms currently have a presence in China.

In China, foreign lawyers are permitted to: provide clients with counsel with respect to the laws of the countries where they are qualified to practice and on international conventions and international practices; handle legal affairs in the country where the lawyers are qualified to practice law when entrusted to do so by their clients or Chinese law firms; entrust, on behalf of foreign clients, Chinese law firms to provide counsel on Chinese legal affairs; enter into contracts to maintain entrustment relationships with Chinese law firms; and provide their clients with information about the impact of the Chinese legal environment.

Within this rubric, opportunities exist for U.S. law firms providing legal services in China in a number of practice areas, including capital markets, mergers and acquisitions, international trade,

inbound and outbound investment, shipping, intellectual property rights, arbitration,² life sciences, real estate, information technology and e-commerce, labor and employment, private equity, and venture capital.

The trade mission will also present opportunities for participants to engage with Chinese individuals, private companies, and state-owned enterprises, particularly those seeking to do business in the United States. Depending on the type of business, Chinese companies doing business in the United States could require legal services on United States laws for issues relating to taxation, employment, corporate finance, real estate, litigation, sale of goods, intellectual property rights, customs and international trade, export controls, foreign corrupt practices, investment, and cross-border data flows, and many other legal practice areas.

Beijing

As the national capital, Beijing is the locus of China's central governmental authorities and provides an excellent base of operations for U.S. law firms entering the Chinese legal services market. The municipal government is promoting development in Beijing's high-technology and financial services sectors. Beijing's economic growth is primarily driven by the services sector, led by its financial services, tourism, healthcare, and IT sectors.

Beijing is an attractive location for U.S. law firms seeking clients who need legal advice on investing in and exporting to China. In 2009, Beijing municipal authorities unveiled financial incentives, including subsidies and tax breaks, for multinational companies that locate their regional headquarters in Beijing. In 2011, companies in Beijing received \$2.9 billion in venture-

² Generally, foreign lawyers may represent clients in international or foreign-relation arbitral proceedings before the China International Economic and Trade Arbitration Commission (CIETAC) that do not involve Chinese legal affairs. Recent amendments to the rules that govern CIETAC permit arbitration before CIETAC to be held in languages other than Chinese.

capital financing, largely focused on the IT industry; this represented 40 percent of the national total and was more than twice the amount of venture-capital financing in Shanghai, China's second-largest destination for venture capital. Beijing is also set to benefit from \$317 billion earmarked by the central government for investment in IT through 2015.

Shanghai

While Shanghai has long been considered China's commercial and financial capital, in 2009 China's State Council sought to advance Shanghai's position in the global economy by issuing an official blueprint for Shanghai to become an international financial and shipping center by 2020, on par with Hong Kong, New York, and London. The development of professional services, including legal services, is a key aspect of this blueprint.

Shanghai, by many economic indicators the largest economy of all cities in China, is an attractive market for U.S. law firms seeking business or expansion opportunities in China. Municipal government authorities reported that foreign direct investment in Shanghai reached \$15.19 billion in 2012, up 20.5 percent from the previous year. The Shanghai Stock Exchange is the world's sixth largest in terms of trade value (\$3.7 billion) and market capitalization (\$2.4 billion), and experts expect initial public offerings in greater China (including the Hong Kong, Shenzhen, and Shanghai Stock Exchanges, which accounted for 40 percent of all IPO funds raised worldwide in 2011) to increase over the coming years.

More than 380 multinational companies have set up regional headquarters in Shanghai. This city has the highest percentage of foreign residents in China, with nine out of every 1,000 people coming from abroad. Income levels in Shanghai are among the highest in the country, exceeding those in Beijing, and its infrastructure is one of the most advanced in China.

MISSION SCENARIO³

The mission will start in Beijing on Tuesday morning when U.S. Embassy officials will provide an overview of the Beijing political, economic and commercial environment, with a particular focus on market-entry rules and requirements and potential opportunities for foreign legal services providers in China. Following this market briefing, the trade mission participants will meet throughout the day with relevant authorities responsible for regulating legal services in China. Tuesday will conclude with a dinner and reception, to which the U.S. Ambassador to China will be invited.

On Wednesday, the U.S. Department of Commerce will host a forum on doing business in the United States specifically tailored to the expressed strengths and goals of the trade mission participants, during which the participants will have an opportunity to network with Chinese businesspersons who have expressed an interest in doing business in the United States and Chinese law firms interested in partnering with U.S. law firms. Wednesday afternoon, participants have the option to meet with their legal industry counterparts, likely including a Beijing-based bar association. Alternatively, participants may conduct follow-up meetings. The mission will travel to Shanghai on Wednesday night.

On Thursday morning, senior U.S. Consulate officials will provide mission participants with a Country Team Briefing, which will provide participants with an overview of the political, economic and commercial environment in Shanghai. The group will then meet key government authorities, likely including Shanghai municipal officials responsible for regulating legal services, and legal industry counterparts possibly to include the AmCham Legal Committee and a Shanghai-based bar association. Thursday afternoon, the U.S. Department of Commerce will host a forum on

³ Mission Scenario events are subject to change based on availability.

doing business in the United States specifically tailored to the expressed strengths and goals of the trade mission participants, during which the participants will have an opportunity to network with Chinese businesspersons who have expressed an interest in doing business in the United States and Chinese law firms interested in partnering with U.S. law firms. Participants may conduct follow-up meetings late Thursday afternoon. The day's events will conclude with a no-host or on-own dinner.

Trade mission participants will be counseled before and after the mission by Commerce staff.

Participation in the mission will include the following:

- Pre-travel briefings on subjects relevant to the mission, for example business practices in China and personal security;
- Pre-scheduled meetings with government officials and representatives of the Chinese legal community;
- Transfers to and from airports and hotels in Beijing and Shanghai; and
- Networking receptions in Beijing and Shanghai.

Following the trade mission, participants are encouraged to consider utilizing additional for-fee services offered by the U.S. Department of Commerce's Commercial Service while in China to pursue additional opportunities in any of the mission cities or other cities throughout China. The Commercial Service offers a full range of export assistance services, including single company promotions and tailored matchmaking appointments and meetings (additional fees will be charged, and participants should arrange for such services in advance).

PROPOSED TIMETABLE

<u>Sunday</u> 9.15.2013	<u>Afternoon</u> Arrive Beijing
<u>Monday</u> 9.16.2013	<u>Morning</u> Breakfast meeting with U.S. Embassy officials Meeting with relevant PRC/municipal officials <u>Afternoon</u> Meeting with relevant PRC/municipal officials <u>Evening</u> Dinner and reception
<u>Tuesday</u> 9.17.2013	<u>Morning</u> Forum on doing business in the United States Networking with Chinese businesspersons, law firms and other potential business partners <u>Afternoon</u> Meeting with Chinese bar association OR Opportunity for U.S. firms to conduct follow-up meetings <u>Evening</u> Travel to Shanghai

<u>Wednesday</u> 9.18.2013	<u>Morning</u> Shanghai Consulate Briefing Meeting with Shanghai (municipal-level) officials Lunch meeting with Shanghai bar association OR AmCham Legal Committee <u>Afternoon</u> Forum on doing business in the United States Networking with Chinese businesspersons, law firms and other potential business partners <u>Evening</u> No-host or On-own Dinner; mission concludes

PARTICIPATION REQUIREMENTS

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the U.S. Department of Commerce. Applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as provided in detail below.

Fees and Expenses:

Applicants selected to participate on the mission will be required to pay a participation fee of \$4,300 to the U.S. Department of Commerce. Applicants that qualify as small or medium-sized enterprises (SME),⁴ and bar associations and other trade organizations, will pay a reduced participation fee of \$4,000. The fee for each additional representative (for both large and small entities) is \$800. After the mission, participants will have the opportunity to participate in matchmaking and other Commercial Service export assistance services in Beijing, Shanghai, or elsewhere in China; additional fees will be charged for such services.

Exclusions:

The mission fee does not include any personal travel expenses such as air transportation, lodging, most meals, and local ground transportation (transportation to and from airports in China and to and from meetings on the trade mission agenda will be provided). Participants will be able to take advantage of U.S. Government rates for hotel rooms. Participants will be required to obtain business visas, and Chinese fees and other processing expenses to obtain such visas are not included in the mission costs. The Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

CONDITIONS FOR PARTICIPATION:

Applicants must submit a completed and signed trade mission application and supplemental application materials, including adequate information on the applicant's services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete

⁴ A legal services SME is defined as a law office or other provider of legal services with a maximum of \$10 million in average annual receipts, or that otherwise qualifies as a small business under Small Business Administration (SBA) regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardtopics/index.html>). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

application, we may reject the application, request additional information/clarification, or otherwise take the lack of information into account when evaluating the applications.

In question 11 of the trade mission application, each applicant is asked to certify that the services it seeks to export as a result of the trade mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. If applicants find this requirement difficult to meet, or are unsure of whether they can certify this, we encourage them to indicate on the application form why the applicant firm's services should be considered for promotion during the mission, including how the firm's goals and objectives are consistent with the purpose of the mission.

In the case of a bar association or other trade organization, the applicant must certify that as part of its activities in this trade mission, it will represent the interests of members meeting the criteria discussed in the previous paragraph or provide an explanation of the type described in the previous paragraph.

In addition, as part of the trade mission application each applicant must:

- Certify that the services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

- Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

SELECTION CRITERIA FOR PARTICIPATION:

The Department of Commerce intends to select 15 applicants to participate in the trade mission. A minimum of 13 and maximum of 17 applicants will be selected to participate. In the event that fewer than 13 applicants are selected, Commerce may carry out the mission with the applicants it has selected; cancel the mission; or postpone it. Targeted mission participants include: U.S. law firms that have an interest in entering or expanding their business in the Chinese legal services market, or in providing legal services to Chinese companies or individuals in the U.S. market; and bar associations or other trade organizations that represent U.S. legal service providers that have such interests. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant firm's (or in the case of an applicant bar association or other trade organization, represented legal service providers') services to the Chinese market, with respect either to providing services in China or legal services to Chinese companies in the United States.
- Applicant firm's (or in the case of an applicant bar association or other trade organization, represented legal service providers') potential for business in China, including likelihood of U.S. services exports resulting from the mission.
- Consistency of the applicant firm's (or in the case of a bar association or other trade organization, represented legal service providers') goals and objectives with the scope of the mission.

The Department of Commerce may also consider factors related to the designated representative that will participate in the mission on behalf of the applicant, including: his/her practice area and level of seniority; his/her experience conducting business in China; any experience opening a foreign law office; and whether he/she is admitted to practice law in the United States. As the Department is seeking a diverse group of participants, the size, location, and areas of expertise of the applicant may also be considered.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

TIMEFRAME FOR RECRUITMENT AND APPLICATION

Mission recruitment will be conducted in an open and public manner, including publication in the Federal Register, posting on the Commerce Department trade mission calendar (<http://www.export.gov/trademissions>) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for this mission will begin immediately and conclude no later than August 16, 2013. The Department of Commerce will review applications and make selection decisions on a rolling basis beginning April 15, 2013 until the maximum number of participants is selected. Applications received after August 16, 2013 will be considered only if space and scheduling constraints permit.

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